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14 UNITED STATES DISTRICT COURT

15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,  
17 Plaintiff,  
18 v.  
19 JOHN JACOB OLIVAS,  
20 Defendant.  
21

ED CR No. 18-231-JGB

GOVERNMENT'S OPPOSITION TO  
DEFENDANT'S MOTION TO DISMISS  
WITHOUT PREJUDICE AND RECUSE THE  
USAO, OR IN THE ALTERNATIVE, TO  
DISMISS WITHOUT PREJUDICE AND  
RECUSE AUSA JOSEPH WIDMAN (DKT.  
102); DECLARATIONS OF ELI A.  
ALCARAZ AND JOSEPH B. WIDMAN;  
EXHIBITS 1-3

22 [EXHIBIT 4 FILED UNDER SEAL]

23 Hearing Date: November 15, 2021  
24 Hearing Time: 2:00 P.M.  
25 Location: Courtroom of the  
Hon. Jesús G. Bernal

26 Plaintiff United States of America, by and through its counsel  
27 of record, the Acting United States Attorney for the Central District  
28 of California and Assistant United States Attorneys Eli A. Alcaraz

1 and Frances S. Lewis hereby files its opposition to defendant's  
2 "motion to dismiss without prejudice and recuse the USAO, or in the  
3 alternative, to dismiss without prejudice and recuse AUSA Joseph  
4 Widman" (dkt. 102).

5 This opposition is based upon the attached memorandum of points  
6 and authorities and supporting exhibits 1-4, where exhibit 4 will be  
7 filed under seal; the declarations of Eli A. Alcaraz and Joseph B.  
8 Widman; the files and records in this case; and such further evidence  
9 and argument as the Court may permit.

10 Dated: October 26, 2021

Respectfully submitted,

11 TRACY L. WILKISON  
12 Acting United States Attorney

13 SCOTT M. GARRINGER  
14 Assistant United States Attorney  
Chief, Criminal Division

15 /s/  
ELI A. ALCARAZ  
16 FRANCES S. LEWIS  
Assistant United States Attorneys

17 Attorneys for Plaintiff  
18 UNITED STATES OF AMERICA  
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**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

Almost nine years ago in a criminal matter unrelated to the case before this Court, United States v. Julio Cesar Ramirez, ED CR 11-051-VAP, then-defendant Ramirez was awaiting sentencing after having pled guilty under a plea agreement and after both the United States and defendant Ramirez had filed sentencing positions. (ED CR 11-051-VAP, Dkts. 42, 43, 48, 54.) At that time, he filed a motion for discovery based on an anonymous phone call to defense counsel<sup>1</sup> where a person identified only as "Mike" provided a wide range of allegations of misconduct of law enforcement officers and informants related to his case. (ED CR 11-051-VAP, Dkt. 60.) The Ramirez Court denied defendant Ramirez's motion explaining that the "government has investigated the allegations regarding any misconduct by federal agents thoroughly (to the extent possible, given their vague nature)" and "the Court is persuaded no further investigation is warranted." (ED CR 11-051-VAP, Dkt. 71.)

As will be explained in this opposition, and as seen in the accompanying exhibits, defendant Ramirez's motion was based on vague and unsubstantiated allegations. Defendant Olivas, who was a federal

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<sup>1</sup> At the time defendant Ramirez filed the motion (December 17, 2012), he was represented by then-Deputy Federal Public Defender Jeffrey Aaron. This Court, however, when serving as a Deputy Federal Public Defender in Riverside, was Ramirez's counsel of record for approximately six days from Ramirez's initial appearance on June 3, 2011 (ED CR 11-051-VAP, dkt. 11) until replaced by DFPD Aaron on June 9, 2011 (ED CR 11-051-VAP, dkt. 14). While the Court has never served as counsel to a party in this proceeding (United States v. Olivas) and the representation in Ramirez was of very limited duration, the government notes the prior representation in Ramirez, in case the Court believes that its prior representation of defendant Ramirez creates a conflict as to this specific motion such that the motion should be referred to a different judicial officer. See 28 U.S.C. § 455.

1 agent at the time and who appears to have had an auxiliary role in  
2 the Ramirez case, was swept up into the investigation into the  
3 Ramirez allegations, along with several other law enforcement  
4 officers and confidential informants. Then-Special Agent Olivas,  
5 though, was included not because he was specifically named, but  
6 because he appeared to be the closest fit to one of the vaguer  
7 allegations. Then-AUSA Joseph Widman, who left the USAO in September  
8 2020 to serve as a California Superior Court Judge, was the  
9 prosecuting attorney in the Ramirez case and conducted the  
10 investigation into the allegations, which appears to include at least  
11 one interview of then-Special Agent Olivas.

12 Now, defendant Olivas tries to cobble together a conflict of  
13 interest based on his limited role in an unrelated case following a  
14 brief investigation into vague misconduct allegations by then-AUSA  
15 Widman who years later became the prosecuting AUSA in this case and  
16 who has not been associated with the USAO since September 2020. The  
17 Court should deny defendant Olivas's "motion to dismiss without  
18 prejudice and recuse the USAO, or in the alternative, to dismiss  
19 without prejudice and recuse AUSA Joseph Widman" ("Motion," dkt. 102)  
20 for several reasons. First, there is no actual conflict of interest  
21 justifying recusal of Mr. Widman, let alone the Riverside Branch  
22 Office of the Central District USAO or the Central District USAO as a  
23 whole. Second, just as there was no actual conflict of interest, the  
24 facts do not support the appearance of a conflict of interest.  
25 Finally, defendant's conflict, if based on the appearance of a  
26 conflict, cannot succeed because he has not shown "actual prejudice."  
27 The Court should deny the Motion.

1 **II. FACTUAL BACKGROUND**

2 **A. *United States v. Ramirez***

3 Defendant Julio Cesar Ramirez was indicted by the USAO on June  
4 1, 2012, and was prosecuted by then-AUSA Widman. (United States v.  
5 Ramirez, ED CR 11-051-VAP, Dkt. 1; Widman Decl. ¶ 2.) A signed plea  
6 agreement was filed in the Ramirez case on September 10, 2012.  
7 (United States v. Ramirez, ED CR 11-051-VAP, Dkt. 42.) According to  
8 the plea agreement factual basis, the criminal conduct in the Ramirez  
9 case generally took place between July 2010 and January 2011. (Id.  
10 at 20-23.) Defendant pled guilty on October 1, 2012. (Id., Dkt.  
11 43.) The United States filed its sentencing position on November 19,  
12 2012 (id., dkt. 48) and defendant Ramirez filed his sentencing  
13 position the same day (id., dkt. 54).

14 On December 17, 2012, defendant Ramirez filed a motion for  
15 discovery. (Alcaraz Decl., Ex. 1 at 11-21.) Specifically, he  
16 requested "that the Court order the government to contact the  
17 Riverside Police Department, the Fontana Police Department, the FBI,  
18 the DEA, and ICE, and request full discovery of any reports,  
19 statements, personnel files, memoranda, videos, or any other evidence  
20 of (1) Misconduct by Detective Ron Kipp; (2) Misconduct by past or  
21 present informants in the Ramirez case; (3) Misconduct by the ICE  
22 agent known as 'Robbie'; (4) Evidence of past or present gang  
23 membership by informants in the Ramirez case; (5) Evidence of any  
24 past or present personal relationship with persons in Eastside Riva  
25 or Casa Blanca [gangs] by past or present agents in the Ramirez case;  
26 (6) The informant files maintained by the various agencies for the  
27 informants known as 'Monkey,' 'Daniel' or 'Big D,' and 'Drew';  
28 (7) The personnel file for Detective Ron Kipp and the ICE agent known

1 as 'Robbie'; [and] (8) Any other relief the Court believes would be  
2 reasonable and proper." (Id. at 17.) Then-Special Agent Olivas was  
3 not identified by name in this discovery motion.

4 The request was made after defense counsel received a phone call  
5 by someone identified only as "Mike" who made a series of allegations  
6 against law enforcement and informants. (Id. at 12.) "Mike" named  
7 an ICE agent that allegedly was named "Robbie" and was allegedly the  
8 lead ICE agent, and made specific allegations against him and  
9 informants "Monkey" and "Daniel" or "Big D." (Id. at 12.) There  
10 were specific additional allegations against an informant "Drew" and  
11 a Riverside Detective whose last name was Kipp. (Id. at 12.) One  
12 general allegation was "One of the current ICE agents in Mr.  
13 Ramirez's case has a girlfriend who belongs to Casa Blanc Fern  
14 Street, a local street gang. He assists her in illegal activities,  
15 and helps her out of 'jams.' This is taking place right now. After  
16 Mr. Ramirez's federal case is over, according to Mike, he will be  
17 charged with attempted murder for hire. There is an informant on  
18 this case, and the case agent will be Detective Kipp." (Id. at 13  
19 (internal citations omitted).)

20 Ramirez's defense counsel asked "Mike" to call back and speak to  
21 a defense investigator, which "Mike" never did. (Id. at 13.) Then-  
22 AUSA Widman investigated the anonymous allegations, including  
23 speaking with then-Special Agent Olivas in his capacity as a law  
24 enforcement officer. (Widman Decl. ¶ 3.) Mr. Widman's memory is  
25 that he interviewed then-Special Agent Olivas "regarding the  
26 allegations made about him" and he would "find it implausible that  
27 [he] would have asked Olivas about this relationship history beyond  
28 what was alleged about him in the Ramirez case, although [he has]

1 very little independent recollection of this/these conversation(s)."  
2 (Id.) Mr. Widman filed an opposition to defendant Ramirez's motion.  
3 (ED CR 11-051-VAP, Dkt. 69; Ex. 4.)

4 The opposition explained that some allegations, including  
5 allegations against a local police detective who was not present  
6 during any of the charged criminal conduct in the Ramirez case, are  
7 "completely irrelevant." (Ex. 4 at 7.) It asserted that many of  
8 "Mike's" "claims are perplexingly vague; no agent is identified by  
9 name" and "[t]o the extent these claims can be deciphered, as  
10 detailed in the attached declaration of government counsel, they are  
11 either terribly misleading or false." (Id.) According to the  
12 opposition, then-AUSA Widman spoke with, among others, two then- and  
13 current-group supervisors for the ICE gangs squad, which investigated  
14 the Ramirez case; the first primary case agent Corbin Maxwell; the  
15 second primary case agent Julio Barajas; and then-federal agent, now-  
16 defendant Olivas. (Id. at 13.) Further, ICE's Office of  
17 Professional Responsibility conducted "a routine administrative  
18 inquiry into the allegations" in Ramirez's motion. (Id.)

19 Concerning the allegations that defendant Olivas asserts led to  
20 the basis of the conflict of interest in this case, the opposition  
21 states: "Allegations against '[o]ne of the current ICE agents' re:  
22 current girlfriend who is allegedly a gang member. This allegation--  
23 against an unidentified agent--appears to be completely false.  
24 Although no one with whom government counsel spoke had any  
25 information to support this allegation, the consensus of the agents  
26 was that this allegation conceivably could reference [John Olivas],  
27 because he once had a romantic relationship with a woman who had  
28 family members who lived in the Casa Blanca area of Riverside. The

1 ex-girlfriend was never a gang member or involved in any gang  
2 activity; to the contrary she was a regular person with a legitimate,  
3 full-time job who dated [Olivas] for approximately 12 weeks in 2012.”  
4 (Ex. 4 at 15 (internal citations omitted).) According to then-AUSA  
5 Widman’s declaration supporting the United States’ opposition, Olivas  
6 was one of the agents who transported defendant Ramirez to his  
7 initial appearance on or about June 3, 2011, when Ramirez “said  
8 something to [Olivas] along the lines of, ‘You look like a guy who’s  
9 dating my wife’s third cousin.’” (Id. at 31-32.)

10 According to an email provided by defendant Olivas’s counsel  
11 on October 16, 2021, defendant Olivas wrote an email on December 28,  
12 2012 memorializing his interview with then-AUSA Widman. The email  
13 says he met with AUSA Widman “regarding allegations provided by an  
14 [unknown] source to defense counsel regarding the subject of a past  
15 investigation that officers, agents, etc[.] may have mishandled . . .  
16 and allegedly these allegations cover the span of multiple agents as  
17 well as multiple agencies.” (Ex. 1 at 6.) The email continues “AUSA  
18 Widman stated that one of the particular allegations did not directly  
19 identify my name and/or agency but rather described me as the ‘ICE  
20 agent who is the boyfriend of a girl from the same ‘neighborhood’ as  
21 the defendant.’” (Id.) Olivas said there were only two questions  
22 “directed towards” him: “(1) Did you date a woman who associates with  
23 the particular gang with where she resides? (2) Did you ever assist  
24 this woman in getting out of any ‘jams’?” (Id.) Olivas wrote, “I  
25 stated that I did, in fact date this woman for approximately 10 to 12  
26 weeks (July 2012 [sic] - September 2010) and that we ended our  
27 relationship 2 years and 2 months ago (October 2010). I also stated  
28 that during the time I was dating this woman, she currently had a

1 brother, nephew and grandparents that resided in the adjacent  
2 neighborhood opposite of where defendant used to reside.  
3 Furthermore, I did not assist this woman in getting out of 'jams.'"  
4 (Id.).

5 According to a Department of Homeland Security Administrative  
6 Inquiry Affidavit provided by defendant Olivas's counsel on October  
7 16, 2021, defendant made a statement about a former romantic partner  
8 R.B., starting in July 2010 and ending in October 2010. (Ex. 1 at  
9 7.) He describes a "prank" by other law enforcement officers based  
10 on the woman growing up "in an adjacent neighborhood in Riverside and  
11 thus [the pranksters were] making her out to be a gang member." (Id.  
12 at 8.) "My Group Supervisor, . . . along with other members of my  
13 group were present and laughing as well. Unbeknownst to me, I was  
14 the only one not aware of the prank." (Id.) It continues, "It  
15 wasn't until the actual day of the take down that I was made aware  
16 that, in fact, there was a loose correlation between [R.B.] and the  
17 wife of the target of the investigation. On June 1, 2011, Special  
18 Agent Julio Barajas and I arrived at the RPD Magnolia Station to pick  
19 up the target, Julio Cesar Ramirez and transport him to the San  
20 Bernardino Sheriff Department jail facility located in San  
21 Bernardino, California. Once inside the vehicle, Julio Cesar Ramirez  
22 made reference that I looked familiar and that I resembled a man that  
23 was dating the 'third, distance cousin' of his wife [V.]. He  
24 described [R.B.], by her name, her car (black BMW) and her profession  
25 as an executive secretary (Best, Best & Kreiger). He stated that he  
26 had seen her at a restaurant some time ago with this man and that I  
27 resembled this man. I stated that I resemble a lot of people. There  
28 was no further conversation regarding my resemblance to this man. I

1 neither confirmed, nor denied I was that man. Instead, I opted to  
2 say I resemble a lot of people." (Id.) The statement also discusses  
3 restraining orders concerning a former wife, R.A. (Id.)

4 According to a different Department of Homeland Security  
5 Administrative Inquiry Affidavit, this one for Special Agent Julio  
6 Barajas, in "approximately September 2010, I was assigned as the case  
7 agent" for the Ramirez case to "replace[] . . . Corbin Maxwell as the  
8 case agent." (Ex. 2 at 1.) Agent Barajas said that in  
9 "approximately October 2010, SA John Olivas told me that he (Olivas)  
10 was dating a woman (UW), and that he (Olivas) was becoming serious  
11 with her (UW). . . . SA Olivas showed me one or two photos of her  
12 (UW). The photos shown to me did not depict her (UW) as a gang  
13 member or the gang member type." (Id.) Agent Barajas described his  
14 limited understanding about a November 2010 prank against defendant  
15 concerning UW (id.), which appears to be the same prank just  
16 described. Months later, Agent Barajas was in a vehicle with  
17 defendant in February or March 2011, when defendant received a call  
18 from UW and from what Barajas could hear, UW was reinitiating a  
19 relationship with an ex-boyfriend. (Id.) Agent Barajas said that  
20 defendant gave the impression in April 2011 that he hand ended the  
21 relationship with UW. (Id.)

22 Agent Barajas continued that on "June 1, 2011, when I finished  
23 with grand jury testimony [for the Ramirez case], I was called by SA  
24 Heizer and told that RPD or DEA made an allegation against SA Olivas.  
25 The allegation was that SA Olivas told a woman, during a baseball  
26 game at a local Riverside park, that HSI was investigating Julio  
27 Cesar Ramirez. This woman told a law enforcement officer, who then  
28 reported it." (Id.) According to Agent Barajas, he and "SA Olivas

1 [were] to transport Ramirez from RPD to the San Bernardino County  
2 jail. During the transport, Ramirez told Olivas that he (Ramirez)  
3 recognized him (Olivas) from the L.A. Fitness health club. Ramirez  
4 also told him (Olivas) that he (Ramirez) knew that he (Olivas) dated  
5 UW who had some relation to Ramirez or Ramirez's girlfriend. I  
6 recall that Olivas downplayed Ramirez's statements." (Id. at 2.)  
7 Agent Barajas also described the separate investigation conducted by  
8 then-AUSA Widman into the Ramirez case allegations. (Id.)

9 ***B. United States v. Olivas***

10 On or about June 9, 2014, the FBI received an initial complaint  
11 call concerning Olivas following the Riverside District Attorney's  
12 decision not to prosecute Olivas generally for rape, domestic  
13 violence, and unlawful use of a service weapon (the decision not to  
14 prosecute Olivas at the state was later reversed). (Ex. 3 at 1-2.)  
15 On or about June 12, 2014, the FBI received a notification from ICE  
16 OPR about possible civil rights violations by defendant. (Id. at 5.)  
17 On July 1, 2014, FBI Special Agent David Staab met with an ICE OPR  
18 Special Agent and then-AUSA Jay Robinson, where AUSA Robinson agreed  
19 to review the case for any potential federal violations. (Id. at 3.)  
20 The FBI's report of the July 1, 2014 meeting does not mention AUSA  
21 Widman participating, and Mr. Widman does not recall joining the case  
22 as a prosecuting AUSA until 2016. (Widman Decl. ¶ 6.) The FBI  
23 initiated an investigation on August 4, 2014. (Id. at 5.) Then-AUSA  
24 Widman was the chief of the Riverside Branch Office of the USAO  
25 starting January 1, 2014. (Widman Decl. ¶ 1.)

26 In August 2016, then-AUSA Widman received some information about  
27 the Olivas investigation from Agent Staab. (Ex. 3 at 10.) Then-AUSA  
28 Widman became responsible for the investigation in 2016. (Widman

1 Decl. ¶ 6.) On October 4, 2017, then-AUSA Widman participated in an  
2 interview of a potential victim with Agent Staab. (Ex. 3 at 12.)

3 Then-AUSA Widman indicted defendant on the pending charges on  
4 August 1, 2018. (Dkt. 1.) Riverside AUSA Eli Alcaraz filed a notice  
5 of appearance in the matter on February 28, 2019. (Dkt. 21.)  
6 Riverside AUSA Julius Nam replaced then-AUSA Widman on March 12, 2019  
7 as counsel of record in this case. (Dkt. 22.) Los Angeles AUSA  
8 Frances Lewis filed a notice of appearance in this case on April 27,  
9 2020. (Dkt. 47.) AUSA Alcaraz first learned of the Ramirez case  
10 when defendant filed the instant motion on October 12, 2021.

11 (Alcaraz Decl. ¶ 4.) Mr. Widman does not recall talking about the  
12 Ramirez case with AUSA Alcaraz and/or AUSA Nam and/or AUSA Lewis.

13 (Widman Decl. ¶ 4.) When former-AUSA Widman and AUSA Alcaraz  
14 overlapped as AUSAs between November 2018 and September 2020, AUSA  
15 Alcaraz believes that he never had any previous conversations with  
16 Mr. Widman about the Ramirez case, including about defendant Olivas'  
17 involvement and Mr. Widman's opposition to defendant Ramirez's motion  
18 for discovery based on alleged misconduct of various law enforcement  
19 officers and confidential informants. (Alcaraz Decl. ¶ 4.) AUSA  
20 Alcaraz spoke with AUSA Lewis and she informed him that she has no  
21 memory of discussing the Ramirez case with former-AUSA Widman. (Id.)  
22 Mr. Widman left the USAO in September 2020 to serve the State of  
23 California as a Superior Court Judge for the County of San  
24 Bernardino. (Widman Decl. ¶ 1.)

### 25 **III. LEGAL STANDARD**

26 The Department of Justice is required by law to create rules  
27 requiring the disqualification of AUSAs "from participation in a  
28 particular investigation or prosecution if such participation may

1 result in a personal, financial, or political conflict of interest,  
2 or the appearance thereof." 28 U.S.C. § 528.

3 Under 28 C.F.R. § 45.2(a), concerning "Disqualification arising  
4 from personal or political relationship," it is prohibited for an  
5 AUSA to "participate in a criminal investigation or prosecution if he  
6 has a personal or political relationship with: (1) Any person . . .  
7 substantially involved in the conduct that is the subject to the  
8 investigation or prosecution; or (2) Any person . . . which he knows  
9 has a specific substantial interest that would be directly affected  
10 by the outcome of the investigation or prosecution." A "personal  
11 relationship" is defined as "a close and substantial connection of  
12 the type normally viewed as likely to induce partiality." 28 C.F.R.  
13 § 45.2(c)(2). "An employee is presumed to have a personal  
14 relationship with his father, mother, brother, sister, child and  
15 spouse" and whether "relationships (including friendships) of an  
16 employee to other persons . . . are 'personal' must be judged on an  
17 individual basis with due regard given to the subjective opinion of  
18 the employee." Id. (emphasis added.) Importantly, this "section  
19 pertains to agency management and is not intended to create rights  
20 enforceable by private individuals." Id.

21 "Where an employee knows that a particular matter involving  
22 specific parties is likely to have a direct and predictable effect on  
23 the financial interest of a member of his household, or knows that a  
24 person with whom he has a covered relationship is or represents a  
25 party to such matter, and where the employee determines that the  
26 circumstances would cause a reasonable person with knowledge of the  
27 relevant facts to question his impartiality in the matter, the  
28 employee should not participate in the matter unless he has informed

1 the agency designee of the appearance problem and received  
 2 authorization from the agency designee in accordance with paragraph  
 3 (d) of this section." 5 C.F.R. § 2635.502(a).

4 There are also certain procedures set forth in the Justice  
 5 Manual, providing for recusal under certain limited circumstances.  
 6 See Justice Manual § 3-1.140 ("The requirement of recusal does not  
 7 arise in every instance, but only where a conflict of interest exists  
 8 or there is an appearance of loss of impartiality."). Of course, the  
 9 Justice Manual (formerly referred to as the U.S. Attorney's Manual)  
 10 "'is not intended to, does not, and may not be relied upon to create  
 11 any rights, substantive or procedural, enforceable at law by any  
 12 party in any matter civil or criminal.'" United States v. Lorenzo,  
 13 995 F.2d 1448, 1453 (9th Cir. 1993) (considering recusal guidelines  
 14 promulgated in the U.S. Attorneys' Manual, § 1-3.170).

#### 15 **IV. ARGUMENT**

##### 16 **A. THERE IS NO ACTUAL CONFLICT OF INTEREST JUSTIFYING RECUSAL** 17 **OF MR. WIDMAN, LET ALONE THE ENTIRE CENTRAL DISTRICT USAO**

18 Defendant's ambiguous asserted conflict provides no basis for  
 19 recusal. Under rules propagated concerning prosecutor recusal, there  
 20 is no and was no justification at any point to recuse (1) the Central  
 21 District USAO, (2) the Riverside Branch Office of the USAO, or  
 22 (3) former-AUSA, now-California-State-Court-Judge Widman. Defendant  
 23 does not assert, nor can he, a personal, financial, or political  
 24 conflict of interest with Mr. Widman. There is no political or  
 25 financial consideration whatsoever, and there is no personal interest  
 26 due to Mr. Widman's very limited work with now-defendant Olivas on  
 27 another matter. To be considered a "personal relationship" under the  
 28 conflicts of interest regulations, defendant would need to show that

1 Mr. Widman and Olivas had "a close and substantial connection of the  
2 type normally viewed as likely to induce partiality." 28 C.F.R.  
3 § 45.2(a) (defining a "personal relationship" and providing examples  
4 like "father, mother, brother, sister, child and spouse"). Mr.  
5 Widman's sworn statement is that "I never had any personal  
6 relationship with Olivas; my relationship with him was strictly  
7 professional." (Widman Decl. ¶ 3.) Defendant has alleged no such  
8 close personal relationship nor could he based on the facts. There  
9 is no actual conflict of interest and the Motion should be denied.

10 None of defendant's limited case citations stand to the  
11 contrary. In Young, in affirming a district court's power to appoint  
12 a private attorney to prosecute contempt, the Supreme Court mentioned  
13 that federal prosecutors are prohibited from representing the United  
14 States in any matter where they, their family, or their business  
15 associates have any interest, citing 18 U.S.C. § 208(a), which  
16 relates to financial conflicts. Young v. United States ex rel.  
17 Vuitton et Fils S.A., 481 U.S. 787, 803-804 (1987) (holding that  
18 counsel for a party that is the beneficiary of a court order may not  
19 be appointed as prosecutor in a contempt action alleging a violation  
20 of that order). Thus, a private attorney who previously represented  
21 a manufacturing company could not serve as a special prosecutor  
22 because he had a financial interest in the outcome. Id. Defendant  
23 has not alleged -- indeed because he cannot -- that former-AUSA  
24 Widman or anyone from the USAO had or has a financial interest in the  
25 outcome of the case.<sup>2</sup>

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27 <sup>2</sup> Indeed, the only person who has a financial interest in the  
28 case is defense counsel, who was herself an employee of the USAO in  
the Central District of California during much of the relevant time  
period.

1       The Supreme Court's decision in Marshall v. Jerrico, 446 U.S.  
2 238, 243-244 (1980), is equally unavailing. There, in an appeal from  
3 summary judgment in civil litigation of a Fair Labor Standards Act  
4 violation, the Supreme Court held that the influence on the regional  
5 administrator who would seek out evidence supporting penalties was  
6 "too remote and insubstantial to violate the constitutional  
7 constraints applicable to the decisions of an administrator  
8 performing prosecutorial functions." Id. As the Court explained,  
9 "[p]rosecutors need not be entirely 'neutral and detached' . . . . In  
10 an adversary system, they are necessarily permitted to be zealous in  
11 their enforcement of the law." Id. at 248. What the Supreme Court  
12 did not approve, however, was a reimbursement scheme that created a  
13 conflict, which again is far afield from the facts of this case. Id.

14       **B. JUST AS THERE IS NO ACTUAL CONFLICT OF INTEREST, THE FACTS**  
15       **DO NOT SUGGEST THE APPEARANCE OF A CONFLICT**

16       There is no appearance of a conflict of interest either. In the  
17 absence of an actual conflict of interest, defendant tries to  
18 manufacture the appearance of a conflict by suggesting that then-AUSA  
19 Widman had some vendetta against defendant stemming from the Ramirez  
20 misconduct investigation and leading to charges here. Defendant  
21 tries to bootstrap unreliable misconduct allegations on assertions in  
22 his Motion that are simply not correct. In any event, "[t]he Ninth  
23 Circuit has made clear the appearance of impartiality is insufficient  
24 grounds for prosecutorial disqualification." United States v. Nosal,  
25 2009 WL 482236, at \*3 (N.D. Cal. Feb. 25, 2009).

26       Starting with the Ramirez allegations, there were specific  
27 allegations against confidential informants and certain law  
28 enforcement officers, but the allegation that ended up leading to

1 then-AUSA Widman interviewing defendant were vague. The allegation  
2 about an ICE agent assisting a gang member girlfriend was just one of  
3 seven specific buckets of information sought by Ramirez. (Ex. 1 at  
4 17.) So defendant's assertion that the investigation into him  
5 somehow colored then-AUSA Widman's view drastically overstates  
6 defendant's importance to the United States' opposition.

7 Additionally, no ICE agent was named, so defendant was the  
8 person that was the "consensus of the agents" that the allegation  
9 could "conceivably" reference because "he once had a romantic  
10 relationship with a woman who had family members who lived in the  
11 Casa Blanca area of Riverside." (Ex. 1 at 31.) Accordingly,  
12 defendant's October 15, 2021 declaration that "Ramirez accused me" of  
13 "having a girlfriend who belongs to the Casa Blanca Fern Street, a  
14 local gang" and "assist[ing] her in illegal activities and help[ing]  
15 her out of jams" is not accurate. (Ex. 1 at 4.) Defendant was never  
16 named by "Mike." Defendant was various agents' best guest to the  
17 identity of an agent referenced in an exceedingly vague allegation by  
18 "Mike." Investigating this nebulous allegation creates no conflict  
19 of interest nor does it create the appearance of a conflict for the  
20 instant case.

21 Further, defendant overstates the connection between this case  
22 and the inquiry in the Ramirez case, which undercuts any appearance  
23 of a conflict. Specifically, defendant's declaration says, "between  
24 late 2012 and mid-2013, I participated in a number of interviews with  
25 AUSA Widman and OPR regarding these allegations. The inquiry  
26 expanded into my relationship with other women, including a former  
27 spouse who the government has interviewed in connection with my  
28 current case." (Ex. 1 at 4-5.) In fact, defendant's memorializing

1 email from his December 28, 2012 interview with then-AUSA Widman was  
2 limited--"The questions directed towards me were as follows: (1) Did  
3 you date a woman who associates with the particular gang with where  
4 he reside? (2) Did you ever assist this woman in getting out of any  
5 'jams'?" (Ex. 1 at 6.) As explained in the United States'  
6 opposition to the Ramirez motion, "ICE's Office of Professional  
7 Responsibility is conducting a routine administrative inquiry into  
8 the allegations." (Ex. 1 at 13.) Further, according to former-AUSA  
9 Widman, "I find it implausible that I would have asked Olivas about  
10 his relationship history beyond what was alleged about him in the  
11 Ramirez case." (Widman Decl. ¶ 3.) The investigation, according to  
12 defendant's sworn affidavit, was not nearly as broad as he asserts in  
13 his declaration.

14 The contemporaneous records from the Ramirez matter,  
15 specifically defendant Olivas's own affidavit, do not reflect any  
16 discussion of his "entire relationship history" or his relationships  
17 with K.L. and N.B., both of which had ended by November 2012.  
18 Instead, the interviews concerned the woman who appears to be the  
19 basis of the Ramirez allegation, R.B., and an ex-wife, R.A. (Ex. 1  
20 at 7-9.) Neither woman is one of the charged victims in this  
21 indictment. The FBI interviewed R.B. in connection with its  
22 investigation into defendant Olivas, but she has not been named as a  
23 witness and is not expected to testify at trial. While defendant's  
24 ex-wife, R.A., was interviewed as part of this case and has been  
25 identified as a witness under Rule 413, she was not the subject of  
26 the alleged conflict in Ramirez and appears to have only come up  
27 during these interviews because of restraining orders she had sought  
28 against defendant Olivas. Because defendant faces charges in this

1 case concerning violence against former romantic partners, he tries  
2 to create a conflict by lumping any and all former romantic partners  
3 into a single unit to make them appear more relevant to the vague  
4 Ramirez allegations.

5 In any event, even if there was some information about the  
6 charged victims in this case that was disclosed during the Ramirez  
7 investigation, and there is no contemporaneous evidence to support  
8 that, defendant is wrong about other critical facts, including the  
9 timing of Mr. Widman's involvement, that demonstrate the lack of any  
10 conflict or appearance thereof. In particular, his Motion asserts  
11 that "just months" after the Ramirez investigation, then-AUSA Widman  
12 "assumed the role of lead prosecutor against Mr. Olivas in this  
13 case." (Mot. at 3.) First, as shown in Exhibit 3 (at 1 and 5), the  
14 referral on the current charges went to FBI in 2014 by a family  
15 member of a charged victim and by ICE OPR. This investigation was  
16 not initiated by then-AUSA Widman. Further, when the investigation  
17 was initiated, then-AUSA Robinson was the AUSA primarily handling the  
18 matter until sometime in 2016, at which point then-AUSA Widman became  
19 the primary investigator. (Ex. 3 at 8; Widman Decl. ¶¶ 5-6.) There  
20 was approximately three years between the Ramirez investigation and  
21 the time when Mr. Widman became responsible for the instant case.

22 Overall, the facts of the Ramirez case do not support a conflict  
23 of interest between Mr. Widman and defendant nor do they support the  
24 appearance of a conflict. The manner with which the FBI was referred  
25 the case and the timing and sequencing of then-AUSA Robinson  
26 investigating the case and handing it off to then-AUSA Widman erode  
27 any assertion by defendant that his limited participation in the  
28 Ramirez investigation somehow led to a vendetta prosecution by then-

1 AUSA Widman in this case. Moreover, AUSAs handling this matter since  
2 March 2019 did not discuss the Ramirez case with Mr. Widman and did  
3 not even know about it until defendant filed the Motion. Said  
4 another way, between AUSA Robinson initially handling this case, and  
5 AUSAs other than Mr. Widman advancing this prosecution over the last  
6 two and one half years, there is no indication that the Ramirez  
7 investigation impacted the instant charges.

8 Under the rules propagated for identifying actual and apparent  
9 conflicts, there is no reason for Mr. Widman to have recused himself  
10 during the investigation or following indictment, so, it follows,  
11 that there was and is no justification to recuse any member of the  
12 Riverside Branch Office of the Central District USAO or the Central  
13 District USAO as a whole. In addition to the fact that vicarious  
14 disqualification generally does not apply to government agencies,<sup>3</sup>  
15 here, in addition to showing no conflict at all, the defense cannot  
16 show that any purported conflict affected any decisions in the case  
17 or any actions taken by the initially assigned or subsequently  
18 assigned prosecutors.

19 **C. IN ANY CASE, DEFENDANT MUST ESTABLISH "ACTUAL PREJUDICE"**  
20 **AND HE HAS NOT DONE SO, NOR CAN HE**

21 While there was no conflict at all, even if defendant could  
22 establish the appearance of impartiality -- based on (1) a vague  
23 Ramirez allegation that was part of many other allegations,  
24 (2) inaccurate information about how the current investigation opened  
25

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26 <sup>3</sup> Matter of Grand Jury Investigations of Targets, 918 F.Supp.  
27 1374, 1378 n.11 (S.D. Cal. 1996) (noting that the imputed  
28 disqualification rule assumes that the client can hire another law  
firm, whereas in the case of government agencies, "the only choices  
for federal prosecution are the local AUSAs, DOJ attorneys, or  
special prosecutors")

1 and who handled the investigation and prosecution at what times, and  
2 (3) some ill-defined vendetta that purportedly influenced the Olivas  
3 case -- his Motion still fails as he has shown no actual prejudice.

4 A defendant pointing to the appearance of a conflict must show  
5 "actual prejudice." Lorenzo, 995 F.2d at 1453 (9th Cir. 1993).  
6 Here, as in Lorenzo, "there is no suggestion that the U.S. Attorney's  
7 Office did not exercise its discretionary function in an even-handed  
8 manner." Id. He cannot carry such a burden. Defendant's citation  
9 to an Eighth Circuit case for the proposition that he need not show  
10 any prejudice contradicts clear Ninth Circuit law. (Mot at. 6  
11 (citing United States v. Rosnow, 977 F.2d 399, 411 (8th Cir. 1992).)  
12 Setting aside the fact that Rosnow also alleged a financial conflict,  
13 not present here, the Eight Circuit did not so hold -- ruling instead  
14 that there was no conflict precisely because defendant had not  
15 "identified any prejudice resulting from the trial court's refusal to  
16 disqualify the prosecutor." Rosnow, 977 F.2d at 411.

17 For many reasons, there is no actual prejudice. AUSAs Alcaraz,  
18 Nam, and Lewis never spoke with Mr. Widman about the Ramirez case.  
19 AUSA Robinson handled the initial intake and first years of  
20 investigation. There is no indication that the investigation and  
21 charges were handled any differently due to the Ramirez case or Mr.  
22 Widman's connection to it. The grand jury, not the USAO, charged  
23 defendant Olivas with a crime after finding probable cause to indict.  
24 Mr. Widman never represented defendant during the investigation into  
25 the current charges, only to become the prosecutor and defendant has  
26 made no such allegation. There is also no allegation that Mr. Widman  
27 was exposed to immunized, privileged, or otherwise confidential  
28 information regarding Olivas in connection with the Ramirez case.

1 See United States v. Mapelli, 971 F.2d 284, 287-88 (9th Cir. 1992)  
2 (disqualifying two Assistant U.S. Attorneys who had been exposed to  
3 the defendant's immunized testimony, but declining to disqualify the  
4 entire U.S. Attorney's Office).

5 Because defendant does not show any actual prejudice, there is  
6 no reason to disqualify the Central District USAO or any member of  
7 the Riverside Branch Office of the Central District USAO.

8 **V. CONCLUSION**

9 For the foregoing reasons, the government respectfully requests  
10 that this Court deny defendant's "motion to dismiss without prejudice  
11 and recuse the USAO, or in the alternative, to dismiss without  
12 prejudice and recuse AUSA Joseph Widman" (dkt. 102).